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January 3, 2007

**BY HAND DELIVERY**

Jeff S. Jordan  
Supervisory Attorney  
Complaints Examination and  
Legal Administration  
Federal Election Commission  
999 E Street, NW  
Washington, DC 20463

Re: MUR 3878

Dear Mr. Jordan:

We are writing on behalf of Jim Pederson, Pederson 2006 (the "Committee"), and Carter Olson as the Committee's treasurer (collectively, "Respondents") in the above-referenced matter, which alleges various violations of the Federal Election Campaign Act (the "Act") and its implementing regulations. The Arizona Republican Party filed this complaint in the last week before the November 7 general election in a purely partisan attempt to cast negative press attention on the Committee and Mr. Pederson in the waning days of the election. It is legally baseless and contains no facts that would constitute a violation of federal campaign finance law or Commission regulations. The Commission should take no further action on the complaint and should dismiss it immediately.

**Introduction**

Jim Pederson was the Democratic nominee for U.S. Senator from Arizona in the 2006 election. The Committee was his principal campaign committee in that election.

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Part of the Republican Party's strategy in helping defend the incumbent against Mr. Pederson's challenge was to try to alienate Mr. Pederson, a self-made businessman and entrepreneur, from voters by repeatedly emphasizing his personal wealth. The Arizona Republican Party filed this complaint in the last week of the campaign to further this greater strategy. This motivation is apparent in both the complaint's focus on Mr. Pederson's personal spending in its recitation of the facts, and its baseless and incoherent legal theory as to why these facts might constitute a violation of the law.

Every complaint filed with the Commission must include a "clear and concise recitation of the facts which describe a violation of a statute or regulation." 11 C.F.R. § 111.4 (2006). Unwarranted legal conclusions from asserted facts or mere speculation will not be accepted as true, and provide no independent basis for investigation. See Commissioners Mason, Sandstrom, Smith & Thomas, Statement of Reasons, MUR 4960 (Dec. 21, 2001).

Because the complaint states no facts that allege a violation of the Act or Commission rules by any of the Respondents, and because its conclusions find no foundation in law or fact, the Commission should dismiss it without delay.

### **Discussion**

The complaint argues that Respondents violated the Act in two ways. First, the complaint traces a series of political contributions and argues, on an unarticulated legal theory, that the contributions were unlawful when taken together. The second baselessly condemns the Arizona Democratic Party's 2006 vote-by-mail program and inexplicably holds Mr. Pederson responsible for that activity. The Commission should give credence to neither of these arguments.

#### **1. The Alleged "Circumvention" Scheme**

The complaint first alleges that Mr. Pederson, together with the Arizona Democratic Party, engaged in a "pattern of deliberate activities designed to circumvent and otherwise violate the campaign contribution limits established under federal law" to benefit Mr. Pederson's campaign.<sup>1</sup> Compl. at 2.

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<sup>1</sup> It bears noting that although the complaint includes the Committee as a respondent with respect to this allegation, it includes no facts at all, nor any legal argument, linking the Committee, Mr. Olson, or any other employee or agent of the Committee to the transactions at issue.

The complaint points to a series of contributions that, the complainants theorize, evidence a circumvention scheme by which Mr. Pederson gave money to the ADP with the intention of generating more federal money that could be spent to support his election. Compl. at 2. In support of this allegation, the complaint points to personal political contributions Mr. Pederson made to the ADP's nonfederal account during the 2006 election cycle, to nonfederal contributions the ADP made to other party committees, and to federal contributions these other party committees made to the ADP. See Compl. at 1-6.

The actual facts plainly do not support the complaint's theory, however, which amounts to baseless, unfounded speculation. At no time when making contributions to the ADP did Mr. Pederson ask, expect, or know that money he contributed to the ADP would be given to any other state party, or that any recipient state party would make federal contributions to the ADP with these funds. See Pederson Aff. at Exhibit A.<sup>2</sup> Mr. Pederson has a long history of supporting the ADP, having contributed several million dollars to the committee over the past few election cycles and served as the ADP's chair from 2001 to 2005. As he had in previous years, he made these contributions to the ADP for it to use at its own discretion. See *id.* He had no knowledge, intention, or expectation that the ADP would contribute these funds to other state parties in exchange for federal dollars. Tellingly, the complaint presents no facts at all to suggest that he did.

However, even if these contributions were made with the expectation that the ADP would contribute the funds to other party committees, or that these recipient party committees would contribute federal dollars back to the ADP, such an arrangement would violate no provision of the Act or Commission rules. The complainants have implicitly acknowledged this, alleging in their discussion no substantive statute or rule that was violated.<sup>3</sup> In fact, the Commission just recently approved the donation of nonfederal funds explicitly to generate federal contributions in Advisory Op. 2006-33, in which it analyzed a fundraising plan proposed by the National Association of Realtors ("NAR").

NAR, which has a federal PAC, is affiliated with a host of state associations, many of whom have nonfederal PACs. Much of the money NAR raises into its PAC are the fruits of joint fundraising efforts carried out between NAR's PAC and the state associations'

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<sup>2</sup> We are filing today with this document a facsimile of the affidavit. We will send to the Commission the original executed document under separate cover as soon as it is received.

<sup>3</sup> In lieu of a substantive provision, complainants cite to the Act's penalty and procedural provisions. See Compl. at 6 (citing 2 U.S.C. § 437g(a)(5)(B), (6)(C), and (d)(1)).

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state PACs. As part of a plan to help boost the funding of its federal PAC, NAR proposed to provide the state associations with infusions of corporate treasury funds as "incentive payments." The amount paid to each association would "approximately equal the amount of contributions" the federal PAC would receive above current levels.

In response, the FEC concluded that this plan was perfectly permissible. The principal legal question in the matter was whether the proposed plan violated the regulatory ban on using the PAC "establishment, administration, and solicitation" process as a means of exchanging treasury monies for voluntary contributions. The Commission concluded that it did not.

Even if the regulation at issue in Advisory Op. 2006-33 applied to individual nonfederal contributions to party committees – which it does not – the Commission's conclusion in that opinion precludes a finding of a violation here, where the facts are virtually indistinguishable. Mr. Pederson contributed to the ADP (as he had done many times in the past). The ADP later provided nonfederal funds to certain other state parties, who then, at some later time, contributed their own federal dollars to the ADP. Even if the initial contributions were intended to induce the recipient party committees to make federal contributions to the ADP, such contributions would not have been illegal. There is simply no statute or rule that would have prohibited the transactions that occurred here, and no precedent to support the complaint's claim to the contrary.

## **2. The Vote-By-Mail Program**

The complaint next claims certain violations in connection with a vote-by-mail program conducted by the ADP.

It is worth noting that the complaint does not allege any wrongdoing by the Committee in connection with the program. It is also worth noting that the complaint's legal theory as to Mr. Pederson's liability here is a bit confused. It cites the provision of the Act that would prohibit Mr. Pederson from raising so-called "Levin funds," 2 U.S.C. § 441i(b)(2)(C), and yet does not suggest, either directly or indirectly, that Mr. Pederson actually solicited, received, or directed Levin money to the ADP.

Instead, although it is difficult to piece together, the complainant's argument seems to be that Mr. Pederson violated the Act's general prohibition on federal candidates' raising and spending of nonfederal funds because: a) he made personal contributions to the ADP; and b) the ADP later spent money on a vote-by-mail program.

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This argument lacks both factual and legal support. First, there is no suggestion that Mr. Pederson contributed to the ADP with the intention, expectation, or knowledge that his contributions would be used to fund a vote-by-mail program. There is therefore no basis on which to conclude Mr. Pederson was involved at all in the program. As noted above, Mr. Pederson gave to the ADP frequently both before and during his candidacy, and absent any claim or evidence that his contributions were earmarked for support for his campaign, his contributions to the ADP are of no consequence.

Second, even if Mr. Pederson knew when he gave to the ADP that it intended to run a vote-by-mail program, his contributions still would have been legal. The Commission has ruled specifically that a federal candidate may contribute personal funds in amounts exceeding federal limits to organizations that engage in activities that qualify as "federal election activity" under Commission rules, and doing so does not violate the Act's ban on raising or spending nonfederal funds. See, e.g., Advisory Op. 2004-25. There is simply no basis upon which the Commission could conclude that any of the Respondents violated the Act or Commission regulations in connection with the ADP's vote-by-mail program.

### Conclusion

This politically-motivated complaint fails to offer any coherent legal theory or evidence to support any claim that Respondents violated the law in this matter. It offers only unsubstantiated speculation and confused logic, and therefore warrants no further action by the Commission. The Commission should dismiss this matter immediately.

Very truly yours,



Marc E. Elias

Rebecca H. Gordon

Counsel to Respondents Jim Pederson,  
Pederson 2006, and Carter Olson as treasurer

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